

CHAPTER 16 LICENSED EMPLOYMENT SERVICES

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1600 GENERAL PROVISIONS

1600.1 This chapter shall apply to employment agencies, employment counseling services, employer-paid personnel services, and job listing services as defined by the Employment Services Licensing and Regulation Act of 1984, D.C. Law 5-136, D.C. Code §36-1001 *et seq.* (1981), hereinafter referred to as the "Act."

1600.2 The Director may, for good cause shown, waive any of the provisions of this chapter.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Employment Services Licensing and Regulation Act of 1984, D.C. Law 5-136, D.C. Code §36-1001 *et seq.* (1981), Mayor's Order 86-9, issued January 16, 1986, 33 DCR 942 (February 14, 1986).

SOURCE: Final Rulemaking published at 34 DCR 3165 (May 15, 1987).

1601 LICENSE REQUIREMENTS

1601.1 A separate license shall be required for each type of employment service that is provided.

1601.2 Each license to operate an employment agency, employment counseling service, employer-paid personnel service, or a job listing service shall be issued for a period of one (1) year, beginning November 1st of each year and ending October 31st.

SOURCE: Final Rulemaking published at 34 DCR 3165 (May 15, 1987).

1602 APPLICATION FOR LICENSE

- 1602.1 Application for a license to operate an employment agency, employment counseling service, employer-paid personnel service, or job listing service shall be filed with the Department of Consumer and Regulatory Affairs on forms prescribed by the Director.
- 1602.2 Each application for a license to operate an employment agency, employment counseling service, employer-paid personnel service, or job listing service shall include a report of the financial condition of the business on a form prescribed by the Director.
- 1602.3 The Director shall investigate and verify the information contained in the report.
- 1602.4 Each application for a license to operate an employment agency or employment counseling service shall include three (3) copies of the contracts to be used in offering services to job-seekers.
- 1602.5 If an application proposes to provide the services of both an employment agency and an employment counseling service, three (3) copies of the contract to be used for each type of service shall be included in the application.
- 1602.6 The contracts submitted pursuant to §1602.4 shall be conform to the requirements of §1604 of this chapter.
- 1602.7 Each application for a license to operate an employment agency or employment counseling service shall include a schedule of fees to be charged to job-seekers.
- 1602.8 Changes in the fees shall be filed with the Department thirty (30) days prior to the date the changes are to take effect. It shall be unlawful to charge, demand, or receive a fee greater than is specified in the most recent schedule on file with the Department.
- 1602.9 Applications and documents required for an employment agency, employment counseling service, employer-paid personnel service, or job listing service shall be supported by a notarized statement that the information contained in the application and documents is true and correct, and shall indicate the type of license sought.

SOURCE: Final Rulemaking published at 34 DCR 3165 (May 15, 1987).

1603 PAYMENT FOR SERVICES

- 1603.1 Each employment agency or employment counseling service shall give to each job-seeker a numbered receipt for each payment received for services performed by the agency or service.
- 1603.2 Each receipt for payment shall have printed on it the following information;
- (a) The name of the job-seeker;

- (b) The date and amount of payment;
- (c) The purpose for which the payment was made;
- (d) The legible signature of the person receiving the payment; and
- (e) The name and address of the employment agency of employment counseling service.

1603.3 No employment agency or employment counseling service shall charge a job-seeker in advance of the service for which payment is made.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3166 (May 15, 1987).

1604 CONTRACT REQUIREMENTS

1604.1 No employment agency or employment counseling service shall perform any service for a job-seeker until the understanding between the two (2) parties has been reduced to writing in accordance with the provisions of this section.

1604.2 The written understanding of the parties shall be incorporated into a written, dated contract which shall contain the following:

- (a) The specific services to be provided;
- (b) The fees charged for each service;
- (c) The total fee for all services;
- (d) The period of time during which the services are to be provided; and
- (e) The schedule of payment of fees.

1604.3 A job-seeker shall be given the right to cancel any contract with an employment agency or employment counseling service by providing written notification to the agency or service within three (3) days of the date the contract was signed.

1604.4 If mailed, a notification of cancellation shall be timely if postmarked within three (3) days of the date the contract was signed.

1604.5 A copy of the contract shall be given to each job-seeker at the time the job-seeker signs the contract.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3167 (May 15, 1987).

1605 BONDING REQUIREMENTS

1605.1 Each bond shall be executed on a form prescribed by the Director.

1605.2 The name on the bond shall correspond exactly to the name under which the application for licensure is made.

1605.3 The effective date of a bond or any approved form of security in lieu of a bond shall correspond to the beginning of the annual license period, or as otherwise directed by the Director.

1605.4 The expiration date of a bond or any approved form of security in lieu of a bond shall extend one (1) year beyond the end of the annual license period established by the Director.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3167 (May 15, 1987).

1606 RENEWAL OF LICENSES

1606.1 License renewal applications for an employment agency, employment counseling service, employer-paid personnel service, or job listing service shall be submitted to the Director at least thirty (30) days before the expiration date of the current license.

1606.2 Renewal applications shall be granted if the following conditions are met:

- (a) There are no outstanding violations of the Act or this chapter;
- (b) All fines or collateral with respect to violations of the Act or this chapter have been paid;
- (c) The renewal application and any required bond is approved;
- (d) The applicant is in compliance with the Act, this chapter, and all other applicable laws, rules, and regulations of the District; and
- (e) The license renewal fee is paid.

1606.3 Any employment agency, employment counseling service, employer-paid personnel service, or job listing service which fails to obtain a renewal of its license prior to expiration of the license shall be required to apply for a new license.

1606.4 Prior to issuance of a license under §1600.3 an employer agency, employment counseling service, employer-paid personnel service or job listing service shall pay any outstanding fines or collateral, if any, stemming from operating without a license.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3168 (May 15, 1987).

1607 LICENSE FEE

1607.1 The annual license fee for an employment agency, employment counseling service, employer-paid personnel service, or job listing service shall be five hundred dollars (\$500).

SOURCE: Final Rulemaking published at 34 DCR 3165, 3168 (May 15, 1987).

1608 CEASE AND DESIST ORDERS

1608.1 The Director may issue cease and desist orders pursuant to §13 of the Act, D.C. Code §36-1012 (1981), for violation of the Act.

- 1608.2 A written request for a hearing may be mailed, but shall not be considered timely filed unless received by the Director within fifteen (15) days of receipt of the cease and desist order.
- 1608.3 If a timely request for a hearing is not filed, the order of the Director to cease and desist shall be final.
- 1608.4 If, after a hearing, the Director determines that no violation of the Act has taken place, the Director shall rescind the order to cease and desist.
- 1608.5 When the Director, after investigation, believes that any provision of the Act has been violated, but that the general public has not suffered and will not suffer immediate and irreparable loss and injury, the Director shall notify the alleged violator in writing of the alleged violation.
- 1608.6 In the written notice with §1608.5, the Director shall inform the alleged violator of the provisions of §13(b) of the Act, D.C. Code §36-1012(b) (1981), relating to the alleged violator's right to respond to the notice and to the possible consequences of failure to respond.
- 1608.7 Within fifteen (15) days of receipt of this notification, the alleged violator may show cause to the Director in writing why the Director should not issue a cease and desist order. A written show cause response may be mailed, but shall not be considered timely filed unless it is received by the Director within the fifteen (15) day time limit.
- 1608.8 If the alleged violator fails to respond to the Director's notice of violation within the time period set forth in §1608.6, the Director may issue a cease and desist order.
- 1608.9 If the alleged violator's show cause response satisfies the Director that there is no basis for a cease and desist order, the Director shall terminate all proceedings against the alleged violator.
- 1608.10 If the alleged violator's show cause response does not satisfy the Director that there is no basis for a cease and desist order, the Director may schedule a hearing.
- 1608.11 The Director shall notify the alleged violator in writing by certified mail of the date, time, and location of the hearing at least five (5) days in advance of the hearing.
- 1608.12 If the Director determines, after the hearing, that the alleged violator has violated any provision of the Act, the Director shall issue a cease and desist order.
- 1608.13 If the Director determines, after the hearing, that the alleged violator has not violated any provision of the Act, the Director shall terminate all proceedings against the alleged violator.
- 1608.14 If the alleged violator fails to comply with a cease and desist order, the Director shall refer the matter to the Office of the Corporation Counsel of the District of Columbia for appropriate action.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3169 (May 15, 1987).

1609 DENIAL, REVOCATION, AND SUSPENSION

- 1609.1 The Director may suspend, revoke, deny, or refuse to renew a license pursuant to §§13 and 15 of the Act, D.C. Code §§36-1012 and 36-1014 (1981), for violations of the Act.
- 1609.2 Each applicant for or holder of a license, shall be afforded notice and an opportunity for a hearing prior to any action of the Director that would have one (1) or more of the following effects:
- (a) Denial of a license other than for failure to meet standard application qualifications or requirements;
 - (b) Suspension of a license;
 - (c) Revocation of a license;
 - (d) Refusal to issue a renewal by annual registration for any cause other than failure to pay the prescribed renewal fee;
 - (e) Ordering restitution to a complainant for losses or expenses; or
 - (f) Imposition of a fine.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3170 (May 15, 1987).

1610 NOTICE OF PROPOSED ACTION

- 1610.1 When the Director proposes taking an action adverse to a licensee or applicant, having an effect listed in §1609.2, the Director shall first give to the licensee or applicant a written notice which shall contain at a minimum the following:
- (a) What action the Director proposes to take;
 - (b) Why the Director proposes to take the action, stating the specific reason(s);
 - (c) When the Director proposes to take the action;
 - (d) How, when, where the affected party may file a request for a hearing;
 - (e) Whether or not a request for a hearing will stop the proposed action of the Director;
 - (f) The right of the affected party to do the following:
 - (1) To present evidence;
 - (2) To request that witnesses and documents be subpoenaed;
 - (3) To cross-examine adverse witnesses;
 - (4) To be represented by counsel of choice at no expense to the Director; and

- (g) That if the affected party fails to appear for the hearing, the Director may make a final decision without a hearing.

1610.2 The notice of proposed action may be served either personally or by certified mail, return receipt requested, directed to the person concerned at the last known residence or business address as shown by the records of the Department.

1610.3 The notice shall be deemed to have been properly served upon an applicant or licensee if a copy of the notice is left at the residence of the applicant or licensee with a person over the age of sixteen (16) years who then resides at the address.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3170 (May 15, 1987).

1611 REQUEST FOR A HEARING

1611.1 A request for a hearing shall be filed in writing with the Director within fifteen (15) days of receipt of the notice of proposed action. The request shall contain at least the following:

- (a) Name, address, and telephone number of the petitioner;
- (b) Address and nature of the business;
- (c) The proposed action or order being appealed;
- (d) Date of the proposed action or order being appealed;
- (e) Name and title of the person whose proposed action or order is being appealed;
- (f) A statement giving the specific reasons why the petitioner believes the action or order is wrong; and
- (g) If possible and available, a copy of the order or proposed action being appealed.

1611.2 A written request for a hearing may be mailed, but shall not be considered timely filed unless it is received by the Director within the fifteen (15) day time limit set forth in §1611.1.

1611.3 Within five (5) business days of receiving a timely request for a hearing, the Director shall appoint a hearing examiner to convene a hearing, hear evidence, develop proposed findings of fact and conclusions of law, and recommend a decision to the Director.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3171 (May 15, 1987).

1612 FAILURE TO REQUEST A HEARING

1612.1 If a person served with a notice of proposed action fails to request a hearing within the time and in the manner specified in §§1611.1 and 1611.2, the Director may, without a hearing, take the action proposed in the notice.

SOURCE: Final Rulemaking published at 34 DCR 3172 (May 15, 1987).

1613 THE HEARING EXAMINER

1613.1 Once the hearing examiner has been appointed by the Director, that hearing examiner shall be responsible for all matters pertaining to the hearing, including but not limited to, the following:

- (a) Establishing a hearing file;
- (b) Setting a date, time, and place for the hearing;
- (c) Conducting the hearing in a fair and impartial manner;
- (d) Making proposed findings of fact and conclusions of law; and
- (e) Forwarding the proposed findings of fact and conclusions of law to the Director for final decision.

1613.2 Prior to the hearing, the hearing examiner may meet with all parties, at a time certain, to ascertain whether there has been a settlement and to determine if the parties can stipulate to some of the facts and evidence so that only issues in dispute are contested at the hearing, thereby not unduly prolonging the hearing process.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3172 (May 15, 1987).

1614 NOTICE OF HEARING

1614.1 At least seven (7) days prior to the hearing, the hearing examiner shall serve written notice on all parties that a hearing has been scheduled, and shall state the following:

- (a) The date, time, and place of the hearing;
- (b) The name, address and telephone number of the hearing examiner; and
- (c) Any other specifics, consistent with the Act or this chapter.

1614.2 The hearing shall be scheduled in not less than fifteen (15) nor more than thirty (30) days from receipt of the request for a hearing.

1614.3 The notice of hearing shall be served in conformity with the provisions of §§1610.2 and 1610.3 of this chapter.

1614.4 If a party does not appear and no continuance has been granted, the hearing examiner, having determined on the record that the party has been served with the notice of hearing as provided in this chapter, may proceed to consider the matter and render a proposed decision on the basis of the evidence available.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3173 (May 15, 1987).

1615 CONDUCT OF HEARING

1615.1 Every hearing shall be open to the public.

- 1615.2 In connection with any hearing held pursuant to this chapter, the hearing examiner shall have the following powers:
- (a) To request the Director to appoint a representative to present the Department's case at the hearing;
 - (b) To administer oaths or affirmations to witnesses called to testify;
 - (c) To subpoena witnesses, relevant books, papers, and documents;
 - (d) To take testimony;
 - (e) To examine witnesses;
 - (f) To rule on motions and objections;
 - (g) To direct the continuance of any case;
 - (h) To establish a timetable for the submission of proposed findings of fact, conclusions of law, and decision by the parties; and
 - (i) To make proposed findings of fact and conclusions of law and to recommend a decision to the Director.
- 1615.3 The hearing examiner shall receive and consider any evidence or testimony. However, the hearing examiner shall exclude irrelevant, immaterial, or unduly repetitious evidence.
- 1615.4 In any hearing resulting from the Director's contemplated action to deny licensure, the applicant for licensure shall have the burden of satisfying the hearing examiner of the applicant's qualifications.
- 1615.5 In any hearing resulting from the Director's contemplated action to refuse to renew, to suspend, or to revoke a license, or to refuse to transfer or restore a license, to impose a fine, or to order restitution, the Department shall have the burden of proving that such action should be taken.
- 1615.6 In all hearings, a complete record shall be made of all evidence presented during the course of the hearing. Any party to the proceedings upon request shall be furnished with a copy of the record, or any part of the record, upon payment of the cost of producing or reproducing the record or part of the record.
- 1615.7 The hearing examiner shall take all necessary steps to insure that all Department employees who are called by a party as witnesses are present for the hearing; Provided, that the party has submitted their names and titles in writing to the hearing examiner at least three (3) business days in advance of the hearing.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3173 (May 15, 1987).

1616 FINDINGS, CONCLUSIONS, AND DECISION

- 1616.1 Within thirty (30) days from the date the hearing is completed or the hearing record is closed, whichever is later, the hearing examiner shall submit proposed findings of fact and conclusions of law and a recommended decision to the Director.

- 1616.2 The hearing examiner shall serve upon all parties a copy of the proposed findings of fact and conclusions of law and recommended decision at the same time that they are submitted to the Director. The proposed findings of fact and conclusions of law and recommended decision shall be served in accordance with §§1610.2 and 1610.3 of this chapter.
- 1616.3 The parties shall simultaneously be served with a notice advising that written exceptions to the proposed findings of fact and conclusions of law and recommended decision may be filed within fifteen (15) days from the date of receipt.
- 1616.4 The Director may permit or require the parties to present oral argument prior to rendering a final decision.
- 1616.5 The Director shall make a final decision within fifteen (15) business days of the filing of the exceptions or, when no exceptions are filed, within fifteen (15) business days of the expiration of the period within which exceptions may be filed.
- 1616.6 If the Director, after reviewing the record, disagrees with any of the proposed findings of fact or conclusions of law or the recommended decision, the Director may make new findings of fact and conclusions of law and render a final decision accordingly, or may remand the case to the hearing examiner for further proceedings.
- 1616.7 A final decision of the Director shall be served on the parties in accordance with §§1610.2 and 1610.3, and shall notify the aggrieved party of a right to judicial review, if any.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3174 (May 15, 1987).

1617 COMPUTATION OF TIME

- 1617.1 In computing any period of time specified in this chapter, calendar days shall be counted unless otherwise indicated.
- 1617.2 In computing any period of time specified in this chapter, the day of the act, event, or default from which the designated period of time begins to run shall not be included.
- 1617.3 The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.
- 1617.4 Whenever a party has the right or duty to act or proceed within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by first class mail, three (3) days shall be added to the prescribed period.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3175 (May 15, 1987).

1618 MOTIONS

- 1618.1 Except by leave of the hearing examiner during a hearing, an application for an order or other relief shall be made by written motion. A motion shall state with

particularity the grounds on which it is based and shall clearly set forth the order or relief sought. If a motion is to be supported by memoranda, affidavits, or other papers, they shall be attached and served with them motion.

- 1618.2 A copy of each motion, opposition, reply, or other pleading filed shall be served on each party separately represented, and a certificate of service shall appear at the end of the pleading.
- 1618.3 Any party may file a response or opposition to a motion within seven (7) days after service of the motion but the Director or hearing examiner may shorten or extend this time. The response or opposition shall not include a motion for other affirmative relief against the moving party.
- 1618.4 A reply to a response or opposition may be filed within three (3) days after service of the response or opposition, but a reply shall not re-argue propositions, presented in the motion nor present matters which are not strictly in reply to the response or opposition. No further pleadings may be filed except by leave of the Director or the hearing examiner.
- 1618.5 A motion or other pleading shall be submitted on business size eight and one-half inches by eleven inches (8 1/2" x 11") paper. It shall contain the name and number of the case. All typing shall be double-spaced, except for footnotes and quotations, which may be single-spaced and indented. A motion or other pleadings shall be signed by the party filing it, or by the party's attorney.
- 1618.6 When service under §1618.2 is by mail, service shall be deemed complete upon deposit in the United States Mail with postage prepaid.

SOURCE: Final Rulemaking published at 34 DCR 3165, 3176 (May 15, 1987).

